

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

AUG 02 2019

Re: FOIA No. FY19-77
Release Letter

VIA ELECTRONIC AND REGULAR MAIL

Emma Best
MuckRock News
DEPT MR 68295
411A Highland Ave.
Somerville, MA 02144-2516
68295-06159634@requests.muckrock.com

Dear Ms. Best:

This letter responds to your correspondence received May 24, 2019, in which you requested documents pursuant to the Freedom of Information Act (FOIA) and the Federal Energy Regulatory Commission's (Commission) regulations at 18 C.F.R. § 388.112(d) (2019).¹ Specifically, you requested "materials relating to, describing or mentioning the release, unpublication and re-review of Enron datasets, including links on the FERC webpage, maintained by FERC and its corporate partners since their first posting."

A search of the Commission's non-public files identified internal agency emails responsive to your request, which are protected by FOIA Exemption 5.² FOIA Exemption 5 incorporates various privileges, including the deliberative process privilege, which is at issue here. Courts have consistently held that three policy purposes constitute the basis for the FOIA Exemption 5 deliberative process privilege: (1) to encourage open, frank discussions on matters of proposed policy between subordinates and superiors; (2) to protect against premature disclosure of proposed policies before they are finally adopted; and (3) to protect against public confusion that might result from disclosure of reasons and rationales that were not in fact ultimately the grounds for an agency's action. *See Russell v. Dep't of the Air Force*, 682 F.2d 1045, 1048 (D.C. Cir. 1982); *see also EPA v. Mink*, 410 U.S. 73, 87 (1972) (recognizing that "[i]t would be impossible to have any frank discussions of legal or policy matters in writing if all such writings were to be subjected to public scrutiny.").

The withheld documents are intra and inter-agency emails and accompanying attachments regarding the Enron Database. They include recommendations and deliberations as well as attorney-client communications. The documents are precisely the

¹ 5 U.S.C. § 552, *as amended by* the FOIA Improvement Act of 2016, Pub. L. No. 114-185, 130 Stat. 538 (2016).

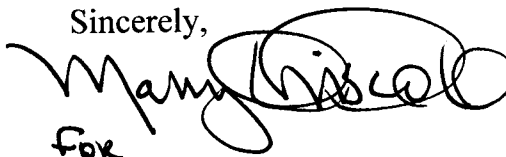
² 5 U.S.C. § 552(b)(5).

type of information FOIA Exemption 5 was created to protect. Furthermore, any factual portions of the document are so inextricably intertwined with the deliberative matter that disclosure would reveal the pre-decisional deliberations. *See In re Sealed Case*, 121 F.3d 729, 737 (D.C. Cir. 1997); *Mead Data Central, Inc. v. United States Dep't of the Air Force*, 566 F.2d 242, 256 (D.C. Cir. 1977) (recognizing that FOIA Exemption 5 protects all communications including purely factual material that would expose to public view an agency's decision-making process).

However, the Commission has elected to provide a discretionary release of two redacted documents which should respond to your FOIA request. The documents can be found on the enclosed disk. As provided by FOIA, any appeal from this determination must be filed within 90 days of the date of this letter. The appeal must be in writing, addressed to James P. Danly, General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, and clearly marked "Freedom of Information Act Appeal." Please include a copy to Charles A. Beamon, Associate General Counsel, General and Administrative Law, at the same address.

You also have the right to seek dispute resolution services from the FOIA Public Liaison of the agency or the Office of Government Information Services (OGIS). Using OGIS services does not affect your right to pursue your appeal. You may contact OGIS by mail at Office of Government Information Services, National Archives and Records Administration, Room 2510, 8601 Adelphi Road, College Park, MD 20740-6001; email at ogis@nara.gov; telephone at (301) 837-1996; facsimile at (301) 837-0348; or toll-free at 1-(877) 684-6448.

Sincerely,

A handwritten signature in black ink, appearing to read "Leonard M. Tao", with a stylized flourish at the end.

Leonard M. Tao
Director
Office of External Affairs

Enclosures

**Office of the General Counsel -
General and Administrative Law
Federal Energy Regulatory Commission
(202) 502-[REDACTED]**

DOCUMENT 2

Subject:
Date:

FERC Action Needed Re Enron Data
Monday, June 24, 2013 6:24:45 PM

The purpose of this email is to alert you to a substantial amount of Personally Identifiable Information (PII) that was recently discovered in FERC's voluminous Enron data files.

IT staff removed the data from public accessibility, and conducted its own data scan which confirmed the existence of a large amount of PII.

Background

However, in April of this year, an electronic data search company named [REDACTED], informed FERC staff that it had discovered approximately 10,000 instances of PII in publicly available Enron data derived from FERC files. Moreover, two additional data search companies have noted or confirmed the presence of PII among the Enron data initially accessed through FERC.

In an effort to protect FERC data, IT staff disabled public access to the Enron data available through FERC's website.

it would cost in the neighborhood of one million dollars to perform a basic purge of the data and up to eight million dollars to have a guaranteed total removal of all PII. Clean-up could take many months to perform, perhaps a year or

[REDACTED] The expense of maintaining the public availability of the data is difficult to justify; combined with the expense of a clean-up of PII, [REDACTED] we recommend that FERC discontinue the public availability of the data because (1) it contains PII, (2) the expense of purging the PII is astronomical, (3) the data is otherwise costly to maintain in relation to its benefits, and (4) the data has diminishing relevance in view of its age. [REDACTED]

FOIA-2019-77
Accepted: May 24, 2019
Track 3
Due Date: June 24, 2019

Note: The requester has been advised that this FOIA will be processed for the following:

materials relating to, describing or mentioning the release, unpublication and re-review of Enron datasets, including links on the FERC webpage, maintained by FERC and its corporate partners since their first posting.

From: 68295-06159634@requests.muckrock.com <68295-06159634@requests.muckrock.com>
Sent: Wednesday, May 22, 2019 8:24 AM
To: FOIA-CEII
Cc: FOIA-CEII
Subject: RE: Freedom of Information Act Request: Enron datasets

Federal Energy Regulatory Commission
FOIA Office
888 First Street Northeast
Washington, DC 20426
May 22, 2019
This is a follow up to a previous request:

Both, for all dates since their first posting.

Filed via MuckRock.com
E-mail (Preferred): 68295-06159634@requests.muckrock.com
Upload documents directly:
https://accounts.muckrock.com/accounts/login/?url_auth_token=AAAawyQJctRkvxj5UXjeYM6dEM4%3A1hTOIL%3AGa-kIq-Haz7MbWznCi2KHvGgc&next=https%3A%2F%2Fwww.muckrock.com%2Faccounts%2Flogin%2F%3Fnext%3D%252Faccounts%252Fagency_login%252Ffederal-energy-regulatory-commission-206%252Fenron-datasets-68295%252F%253Femail%253DFOIA-CEII%252540ferc.gov

Is this email coming to the wrong contact? Something else wrong? Use the above link to let us know.

For mailed responses, please address (see note):

MuckRock News

DEPT MR 68295

411A Highland Ave

Somerville, MA 02144-2516

PLEASE NOTE: This request is not filed by a MuckRock staff member, but is being sent through MuckRock by the above in order to better track, share, and manage public records requests. Also note that improperly addressed (i.e., with the requester's name rather than "MuckRock News" and the department number) requests might be returned as undeliverable.

From: 68295-06159634@requests.muckrock.com <68295-06159634@requests.muckrock.com>

Sent: Monday, February 11, 2019 11:29 AM

To: FOIA-CEII

Cc: FOIA-CEII

Subject: RE: Freedom of Information Act Request: Enron datasets

Federal Energy Regulatory Commission

FOIA Office

888 First Street Northeast

Washington, DC 20426

February 11, 2019

This is a follow up to a previous request:

It most certainly does not satisfy the request, as the materials on the website are not available, and the CACI data was removed. Further when I contacted CACI about it, they told me that FERC itself had removed the materials "for review" for unknown reasons, and that they were unaware of when or even if it would become available again. A review of the Internet Archive's Wayback Machine shows that the materials have been unavailable for years.

Filed via MuckRock.com

E-mail (Preferred): 68295-06159634@requests.muckrock.com

Upload documents directly:

https://www.muckrock.com/accounts/agency_login/federal-energy-regulatory-commission-206/enron-datasets-68295/?email=FOIA-CEII%40ferc.gov&uuid-login=3754bcf3-8404-44e9-9066-1caa757942f5#agency-reply

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From: 68295-06159634@requests.muckrock.com <68295-06159634@requests.muckrock.com>

Sent: Tuesday, January 29, 2019 6:47 PM

To: FOIA-CEII

Subject: Freedom of Information Act Request: Enron datasets

Federal Energy Regulatory Commission
FOIA Office

888 First Street Northeast
Washington, DC 20426

January 29, 2019

To Whom It May Concern:

Pursuant to the Freedom of Information Act, I hereby request the following records:

Materials relating to, describing or mentioning the release, unpublication and re-review of Enron datasets maintained by FERC and its corporate partners.

The requested documents will be made available to the general public, and this request is not being made for commercial purposes.

In the event that there are fees, I would be grateful if you would inform me of the total charges in advance of fulfilling my request. I would prefer the request filled electronically, by e-mail attachment if available or CD-ROM if not.

Thank you in advance for your anticipated cooperation in this matter. I look forward to receiving your response to this request within 20 business days, as the statute requires.

Sincerely,

Emma Best

Filed via MuckRock.com

E-mail (Preferred): 68295-06159634@requests.muckrock.com

Upload documents directly:

https://www.muckrock.com/accounts/agency_login/federal-energy-regulatory-commission-206/enron-datasets-68295/?uuid-login=8d5bad79-93ea-4b4e-93bf-9615e972020a&email=foia-ceii%40ferc.gov#agency-reply

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